

**IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT NASHVILLE**

CALVIN MCADOO,	)	From the Wilson County Chancery Court
	)	at Lebanon, Tennessee
Plaintiff/Appellant,)	
vs.	)	The Honorable C. K. Smith, Chancellor
)	
THERESA ANN MCADOO,	)	Wilson Chancery No. 9606
	)	Appeal No. 01A01-9510-CH-00483
Defendant/Appellee.)	
	)	AFFIRMED
)	
	)	R. Eddie Davidson
	)	Nashville, Tennessee
	)	Attorney for Appellant
)	
	)	Kathryn G. Brinton
	)	Nashville, Tennessee
	)	Attorney for Appellee

FILED

May 22, 1996

Cecil W. Crowson
Appellate Court Clerk

MEMORANDUM OPINION¹

HIGHERS, J.

This is a divorce case. After dividing the marital property, the trial judge ordered Husband to pay a portion of wife's attorney's fees and rehabilitative alimony. Husband has appealed from the trial court's judgment. For the reasons stated below, we affirm.

The parties, who both have high school educations, were married in 1983. No children were born of the marriage. Throughout the marriage, Wife worked at various jobs, making approximately minimum wage. Husband, who was employed at Nissan at the time of trial, made \$42,382.27 in 1994. In 1993, the parties agreed that Wife could go back to school in order to obtain her degree in dental hygiene. At the time of the divorce hearing in 1994, Wife would complete her degree in approximately four to four-and-a-half years.

Following a hearing, the trial court ordered Husband to pay rehabilitative alimony in the amount of \$300.00 a month for 36 months, and \$200.00 a month for a period of 10

¹Rule 10 (Court of Appeals). Memorandum Opinion. -- (b) The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied upon for any reason in a subsequent unrelated case.

months for Wife's attorney's fees.

Husband argues on appeal that the trial court abused its discretion in awarding rehabilitative alimony and attorney's fees to Wife because Wife had ample opportunity to attend school during the marriage, but she chose not to do so. Although Husband does not dispute that Wife worked throughout the marriage, he argues that Wife's financial contributions to the marriage were minimal. Finally, Husband asserts that Wife does not need the support and he has no ability to pay.

T.C.A. § 36-5-101(d)(1) enumerates several factors that are to be considered in evaluating whether and to what extent alimony should be awarded. This section provides:

T.C.A. § 36-5-101. Decree for support of spouse and children—Modification—Delinquencies.— [T]he court shall consider all relevant factors, including:

- (A) The relative earning capacity, obligations, needs, and financial resources of each party, including income from pension, profit sharing or retirement plans and all other sources;
- (B) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party's earning capacity to a reasonable level;
- (C) The duration of the marriage;
- (D) The age and mental condition of each party;
- (E) The physical condition of each party, including, but not limited to, physical disability or incapacity due to a chronic debilitating disease;
- (F) The extent to which it would be undesirable for a party to seek employment outside the home because such party will be custodian of a minor child of the marriage;
- (G) The separate assets of each party, both real and personal, tangible and intangible;
- (H) The provisions made with regard to the marital property as defined in Sec. 36-4-121;
- (I) The standard of living of the parties established during the marriage;
- (J) The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a party to the education, training or increased earning power of the other party;
- (K) The relative fault of the parties in cases where the court, in its discretion, deems it appropriate to do so; and
- (L) Such other factors, including the tax

consequences to each party, as are necessary to consider the equities between the parties.

T.C.A. § 36-5-101 (Supp. 1995).

The legislature has expressed that the public policy of Tennessee is to attempt to rehabilitate an economically disadvantaged spouse by awarding rehabilitative alimony, if an award of alimony is deemed appropriate under the circumstances. T.C.A. § 36-5-101(d)(1).

Evaluating the circumstances of this case in light of the above factors, we find that the trial court did not abuse its discretion in awarding rehabilitative alimony to Wife. The factors that we find particularly pertinent in the present case are that the marriage was of relatively long duration, Wife was awarded only a modest share of the marital estate, and Husband has the greater earning capacity. Moreover, \$300.00 a month for a term of two years is hardly an excessive award, and does not evince any abuse of discretion by the trial court.

We similarly find no abuse of discretion by the trial court with respect to the attorney's fees. The record reflects that Husband possesses the ability to pay such fees, while Wife does not.

We therefore affirm the decision of the trial court in all respects. Costs on appeal are taxed to Husband.

HIGHERS, J.

CONCUR:

FARMER, J.

LILLARD, J.

